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IN THE

Supreme Court of the United States

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OCTOBER TERM, 1948

No. 700

VICTOR J. VEATCH,
Petitioner,
vs.
WILLIAM BORTHWICK, Tax Commissioner of the Territory of Hawaii,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
and
BRIEF IN SUPPORT THEREOF

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SUBJECT INDEX

Page

Petition for writ of certiorari.. 1

I.

Summary and short statement of the matter involved...... 2

II.

Statement of proceedings in the courts below and particularly disclosing the basis upon which it is contended that the Supreme Court has jurisdiction to review the judgment in question.. 3

III.

The questions presented.. 4

IV.

Reasons for granting the writ.. 6

Conclusion 7

Brief in support of petition for a writ of certiorari.......... 9

Concise statement of the case.. 9

Assignment of errors and specification of such as are intended to be urged.. 11

Argument 12

THE TERRITORY OF HAWAII DOES NOT HAVE POWER TO TAX AN EMPLOYEE OF THE UNITED SATES ARMY LIVING AND WORKING ON A MILITARY RESERVATION OF THE UNITED STATES WHERE IN POINT OF FACT SAID EMPLOYEE IS A CITIZEN OF AND DOMICILED IN ANOTHER STATE.. 12

TABLE OF AUTHORITIES CITED

Pages

Beckham v. District of Columbia, 163 F. 2d. 701 25

Beedy v. District of Columbia, 126 F. 2d. 647 25

Coe v. Errol, 116 U. S. 517, 6 S. Ct. 475, 29 L. Ed. 715 23

Collier v. District of Columbia, 161 F. 2d. 649 25

District of Columbia v. Murphy, 314 U. S. 441, 458 25

District of Columbia v. Pace, 320 U. S. 698 25

Domenech v. National City Bank, 294 U. S. 199, 204, 205 55 S. Ct. 366, 79 L. Ed. 857 22

Fort Leavenworth R. R. v. Lowe, 114 U. S. 525, 526, 5 S. Ct. 995, 29 L. Ed. 264 .... 17, 20

Graves v. People of New York ex rel O'Keefe, 306 U. S. 466, 59 S. Ct. 595, 83 L. Ed. 927, 120 A. L. R. 1466 21

Kiker v. City of Philadelphia, 31 A. 2d. 289, 346 Pa. 624, certiorari denied 320 U. S. 741, 64 S. Ct. 41 88 L. Ed. 439 .... 15, 23

Lowe v. Lowe, 133 A. 729, 150 Md. 592, 46 A. L. R. 983, 988 .... 18, 20, 21

M'Culloch v. Maryland, 17 U. S. 316, 4 Wheat. 316, 429 .... 23, 26

Rivera v. Buscaglia, 146 F. 2d. 461 16

Shaffer v. Carter, 252 U. S. 37, 40 S. Ct. 221, 64 L. Ed. 445 21

United States v. Motohara, 4 U. S. Dist. Ct. Hawaii, 62, 65 17

West v. West, 35 Hawaii 461 18

Wood v. Tawes, 28 A. 2d. 850 27

Yerian v. Territory of Hawaii, 130 F. 2d. 786 .... 5, 10, 13

Statutes

	Pages
Buck Act, 4 U. S. C. A. Sec. 106 (a)	5, 14
Organic Act for the Territory of Hawaii, 48 U. S. C. A. Sec. 562	12
Public Salary Tax Act, 5 U. S. C. A. Sec. 84a	12

Other Authorities

Joint Resolution No. 55, 55th Cong. 2nd Sess. 30 Stat. 750	16
37 Cyc. 718	12
84 Cong. Rec. 8973	24
Senate Report No. 112, 76th Cong. 1st Sess. p. 11	13
Senate Report No. 659, 80th Cong. p. 9	14

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES:

The petitioner above named respectfully prays that a writ of certiorari be issued to the United States Circuit Court of Appeals for the Ninth Circuit to review the decision by that Court entered February 7, 1949, affirming a decision of the Supreme Court for the Territory of Hawaii holding that petitioner is subject to the taxing jurisdiction of the Territory of Hawaii.

I.

SUMMARY AND SHORT STATEMENT OF THE MATTER INVOLVED

Petitioner is a civilian employee of the United States Army, working and living on Hickam Field, Territory of Hawaii, a military reservation of the United States. (Agreed Statement of Facts, points 1 and 4, R-12.)

He is a citizen of, and domiciled in, the State of Colorado, and has paid taxes to the State of Colorado, on the same income sought to be taxed herein by the Territory of Hawaii. (Agreed Statement of Facts, points 2 and 5, R-12, 13.)

Petitioner has challenged the applicability of the Territory's tax laws against him on the ground that the Territory has no jurisdiction over him nor the earnings from his employment, and hence is without power to properly tax him.

In affirming the decision of the Supreme Court for the Territory of Hawaii, the Circuit Court of Appeals of the Ninth Circuit determined in effect that simply by coming to the Territory of Hawaii one automatically becomes subject to the tax laws of the Territory without regard to domicile, residence, or whether the same income sought to be taxed is already subject to taxation by the domiciliary state of the taxpayer.

A question of triple taxation is involved.

II.

STATEMENT OF PROCEEDINGS IN THE COURTS BELOW AND PARTICULARLY DISCLOSING THE BASIS UPON WHICH IT IS CONTENDED THAT THE SUPREME COURT HAS JURISDICTION TO REVIEW THE JUDGMENT IN QUESTION.

On the 29th day of November, 1946, civil suit was brought in the District Court of Ewa, County of Honolulu, Territory of Hawaii, by the Tax Commissioner of the Territory against petitioner, for taxes claimed to be due and owing by virtue of the Compensation and Dividends Tax Law of the Territory of Hawaii. (Chapter 98, Revised Laws of Hawaii, 1945.)

A demurrer was filed on behalf of petitioner challenging the applicability of said tax law to petitioner and setting forth 16 points of objection. Said demurrer was overruled and the case submitted on an agreed statement of facts. Judgment was entered against petitioner in the sum of $237.35, and the case appealed on points of law to the Supreme Court of the Territory of Hawaii. (R-2-25.)

On the 30th day of July, 1948, the Supreme Court for the Territory of Hawaii entered its decision affirming the judgment of the lower court.

The opinion of the Supreme Court for the Territory of Hawaii is reported in 37 Haw. 188 (adv. sheets) and is found in the Transcript of Record on pages 27-46.

Appeal was duly perfected to the Circuit Court of Appeals of the Ninth Circuit.

In the Circuit Court of Appeals petitioner elected to stand on but one of the objections urged in the lower courts, and reduced the problem to but one question: "Does the Territory of Hawaii have jurisdiction or power to tax persons in the class of petitioner?"

On the 7th day of February, 1949, the Circuit Court of Appeals for the Ninth Circuit, in a *per curiam* opinion, affirmed the judgment of the Territorial Supreme Court.

The jurisdiction of the Supreme Court is invoked under section 1254 of the new Judicial Code.

The case turns on the construction given by the Circuit Court of Appeals of the Ninth Circuit of a federal statute, namely, section 106 (a) Title 4, U.S.C.A., commonly known as the *Buck Act*.

The case comes within the provisions of paragraph 5 (b) of Rule 38 in that a circuit court of appeals has decided an important question of federal law which has not been, but should be, settled by the Supreme Court.

III.

THE QUESTIONS PRESENTED

The questions presented by this petition are:

1. Does the Territory of Hawaii have the power to tax an employee of the United States army *living and working* on a military reservation of the United

States where in point of fact said employee is a citizen of and domiciled in another state, and particularly where that employee pays taxes on the same income sought to be taxed by the Territory of Hawaii, to his domiciliary state?

2. Did the *Buck Act* enlarge the taxing power of the Territory of Hawaii?

3. Does the phrase in the *Buck Act* "*having jurisdiction to levy such a tax,*"[1] mean that the taxing authority must be able otherwise to establish jurisdiction over the person sought to be taxed?

4. Does not that phrase mean that the Territory of Hawaii cannot tax federal employees, living and working on military reservations, who do not otherwise come within its jurisdiction?

5. Did not the Court of Appeals err in relying on its previous decision in the case of *Yerian v. Territory of Hawaii,* 130 F. 2d 786?

The instant case involves a person *living and working,* on a military reservation, domiciled in another State and paying a net income tax to that State on the same income sought to be taxed herein by the Territory of Hawaii, and not maintaining a residence off the military reservation; while in the *Yerian* case the taxpayer maintained a residence in town, did not work and live on a military reservation and was not subject to triple taxation.

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[1] 4 U.S.C.A. 106 (a) "No person shall be relieved from liability for any income tax levied by any state, or by any duly constituted taxing authority, therein, having jurisdiction to levy such a tax, by reason of his residing within a federal area . . ."

IV.

REASONS FOR GRANTING THE WRIT

It is a matter of common knowledge that during the recent war, thousands of federal civilian employees were ordered to Pearl Harbor, Hickam Field and other military and naval reservations on the Territory of Hawaii.

In a way they were, and still are, like men in the service, subject to orders as to place of employment, mode of travel thereto, and as to the actual housing accommodations they might live in, and in some cases, must live in.

The petitioner is one of such persons. Not only does he work on a military reservation but he also *lives* there. Not only does he pay taxes to his state of domicile but actually maintains a home there.

Shall it be said that simply by his coming to work on one of these military reservations, geographically within the Territory of Hawaii, he is automatically subject to its income tax laws?

In view of the uncertainty of the international situation, and the maintenance of so many military and naval reservations within the several states and territories, and the hundreds of thousands of federal employees that are involved, a question of general and substantial importance in tax law is raised. This is an important question of federal law which has not been, but should be, settled squarely, by direct decision of this Supreme Court.

It should also be noted that the adjudication involves not only the interpretation of a federal statute but also, it involves the relationship of a federal and state (territorial) and interstate tax jurisdictional question.

CONCLUSION

It is respectfully submitted that for the reasons stated this petition for a writ of certiorari should be granted.

Dated, San Francisco, California.

March 31, 1949.

MELVIN M. BELLI,
Attorney for Petitioner.

HYMAN M. GREENSTEIN
of Counsel

IN THE

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OCTOBER TERM, 1948

No.....................

VICTOR J. VEATCH,
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Respondent.

BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

1. The *per curiam* opinion of the Circuit Court of Appeals of the Ninth Circuit affirming the decision of the Supreme Court for the Territory of Hawaii is, set forth in the record. (P. 66.)

2. A concise statement of the grounds on which the jurisdiction of the Supreme Court is invoked has been made in the foregoing petition and need not be repeated here.

CONCISE STATEMENT OF THE CASE

There is no dispute as to the facts.

The case was originally tried upon an agreed statement of facts.

Petitioner is a civilian employee of the United States Army, working and living on Hickam Field, Oahu, Territory of Hawaii, a military reservation of the United States.

He is a citizen of, and domiciled in, the State of Colorado, and has paid taxes to the State of Colorado, on the same income sought to be taxed herein by the Territory of Hawaii.

He has challenged the applicability of the Territory's tax laws upon him.

In short, the question is reduced to simply this:

Does the Territory of Hawaii have power to tax the gross compensation received by an employee of the United States, for services performed by him on a military reservation of the United States, when he both lives and works on said military reservation, which is geographically located on the Territory of Hawaii, he being, however, a domiciliary of the State of Colorado and paying taxes on the same income to the State of Colorado?

The opinion of the Circuit Court of Appeals rested on the authority of the case of *Yerian v. Territory of Hawaii,* (supra) and the *Buck Act.*

It is respectfully submitted that the facts of the instant case are sufficiently distinguishable from the *Yerian* case, and the problem raised of such substantial importance as to warrant independent consideration, if not an actual reconsideration of the issues involved.

ASSIGNMENT OF ERRORS AND SPECIFICATION OF SUCH AS ARE INTENDED TO BE URGED.

We assign the following errors of the Circuit Court of Appeals and intend to urge each of them.

1. The Court erred in not distinguishing the instant case from the *Yerian* case.

2. The Court erred in failing to find that the *Buck Act* is not a positive law creating new tax powers in the Territory of Hawaii.

3. The Court erred in failing to find that the *Buck Act* serves simply to remove certain restrictions relative to the taxation of salaries of persons residing on military reservations by taxing authorities who can otherwise establish jurisdiction over the person sought to be taxed.

4. The Court erred in failing to find that the Territory of Hawaii does not have the power to impose the tax in question on petitioner on the ground that it does not have jurisdiction over him for purposes of taxing his gross compensation derived from employment with the United States government for services performed by him on a military reservation, when he both works and lives on that military reservation and maintains his domicile in another state and pays an income tax on the same income sought to be taxed to his domiciliary state.

ARGUMENT

THE TERRITORY OF HAWAII DOES NOT HAVE POWER TO TAX AN EMPLOYEE OF THE UNITED STATES ARMY LIVING AND WORKING ON A MILITARY RESERVATION OF THE UNITED STATES WHERE IN POINT OF FACT SAID EMPLOYEE IS A CITIZEN OF AND DOMICILED IN ANOTHER STATE.

That the Territory of Hawaii does have a general power of taxation by virtue of Section 55 of the Organic Act to Provide a Government for the Territory of Hawaii, 48 U.S.C.A., Sec. 562, is not a matter of question in this argument; but it is axiomatic that:

> "The taxing power of a state is limited to persons and property within and subject to its jurisdiction."
>
> 37 Cyc. 718

Nor is the question being posed as to whether or not congressional consent to the taxation of federal employees if the taxing authority had the *"jurisdiction to tax such compensation"* was given by the Public Salary Tax Act, 5 U.S.C.A., Sec. 84a, as follows:

> "The United States hereby consents to the taxation of compensation received after December 31, 1938, for personal service as an officer or employee of the United States, any Territory or possession or political subdivision thereof, the District of Columbia, or any agency or instrumentality of any one or more of the foregoing, by any duly constituted taxing authority *having jurisdiction to tax such compensation,* if such

taxation does not discriminate against such officer or employee because of the source of such compensation." (Italics added.)

That was ruled upon in the case *Yerian v. Territory of Hawaii,* 130 F. 2d 786. It is therefore to be presumed that the Territory of Hawaii does have certain powers to tax and has power to tax federal employees, if the Territory *otherwise* has jurisdiction to tax such persons, but it is respectfully submitted that the Territory of Hawaii does not have the power to tax federal employees, living and working on military reservations, who do not otherwise come under its jurisdiction.

In Senate Report No. 112, 76th Cong. 1st. Sess., p. 11, it was clearly set forth that the real purpose of the Public Salary Tax Act was to "facilitate the reciprocal taxation as between State and Federal Governments."

"Under this provision, if any local governmental units have authority to and do impose income taxes, tax may be imposed *upon such compensation subject to the jurisdiction of such units."* (Italics added.)

The report continues:

"The consent is not intended to operate, nor could it operate, as a consent to any taxation to which as individuals these officers and employees are entitled to object whether under the provisions of the Federal Constitution or of the Constitution or statutes of the respective states.

"For example, the consent has no effect upon the

rights of an officer of the federal government to object . . . thus he may urge that a particular tax is invalid as to him because of an unreasonable classification or the lack of . . . jurisdiction to tax, or for other reasons." (Op. cit. P. 12.) (Italics added.)

Moreover, it is urged that the *Buck Act*, 4 U.S.C.A., Sec. 106 does not extend any jurisdiction over the person of a federal employee not otherwise subject to such jurisdiction simply by force of its provisions:

> "No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, *having jurisdiction to levy such a tax*, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any federal area within such state to the same extent and with the same effect as though such area was not a Federal area."

As is pointed out in Senate Report No. 659, 80th Cong., p. 9, Sec. 108 of the Act must be taken into consideration:

> "The provisions of Sections 105 to 110 of this title shall not for the purposes of any other provision of law be deemed to deprive the United States of exclusive jurisdiction over any Federal area over which it would otherwise have exclusive jurisdiction or to limit the jurisdiction of the United States over any Federal area."

And so—it is respectfully submitted that insofar as petitioner (and persons similarly situated) is concerned there is still one question to be answered. Does the Territory of Hawaii have jurisdiction over him, and if not—can it pass a tax law effective as against him?

The principal case which seems to have been brought to the attention of the Supreme Court of the United States, apparently analagous to the case at bar, is *Kiker v. City of Philadelphia,* 31 A. 2d 289, 346 Pa. 624, which was denied certiorari to the Supreme Court of the United States, 320 U.S. 741, 64 S. Ct. 41, 88 L. Ed. 439. As the background for this denial of certiorari is not given, it might reasonably be concluded that it might have been based upon any one of a number of other points and not necessarily the point at issue here. It is sufficient to note that the precise question that is raised here has not been treated by the Supreme Court, although the adjudication involves the interpretation of federal statutes and involves the relationship of a federal and state (territorial) and interstate jurisdictional question.

It is our belief, and on that point it is respectfully urged that the dissenting opinion by Mr. Chief Justice Maxey in *Kiker v. Philadelphia* (supra) represents the more nearly correct view, and that the matter should be re-considered and the final point of jurisdiction made clear.

But even the majority opinion of the *Kiker* case is not necessarily in bar of petitioner's position. It

reaches its conclusion by a line of reasoning not possible in the instant case and places an emphasis upon our dual system of government, by virtue of which the national government cannot run roughshod over the state governments. In the case of a territory, there is no inherent sovereignty to respect. Sovereignty over the entire territory is already established in the federal government and the federal government alone.

When the Republic of Hawaii ceded all rights of sovereignty to the United States upon annexation as a territory (Joint Resolution No. 55, 55th Cong., 2nd Sess., 30 Stat. 750) and subsequently thereto the United States acquired portions of such areas as military reservations, the argument for exclusive jurisdiction over said areas became even stronger than that which obtains where land is acquired by purchase from a state. For in the latter instance a state has a right to bargain with the United States relative to which rights it might desire to retain, while in the former instance the entire area is under jurisdiction of the United States, and remains so until *specific* congressional action dictates otherwise.

Even in the case of *Rivera v. Buscaglia,* 146 F. 2d 461, which upheld the Puerto Rican legislature taxing the compensation of federal employees, it was said:

> "It may be conceded that the power of a dependency to tax its sovereign will not readily be implied, and that the grant by Congress to the legislature of Puerto Rico of a general power to

tax should not be construed as consent to the imposition of taxes on the United States itself or any of its agencies or instrumentalities."

(p. 463.)

And in the case of *Fort Leavenworth R.R. v. Lowe,* 114 U.S. 525, 526, 5 S. Ct. 995, 29 L. Ed. 264, it was said:

> "The land constituting the reservation was part of the territory acquired in 1803 by cession from France, and, until the formation of the State of Kansas, and her admission into the Union, the United States possessed the rights of a proprietor, and had political dominion and sovereignty over it. For many years before that admission it had been reserved from sale by the proper authorities of the United States for military purposes, and occupied by them as a military post. *The jurisdiction of the United States over it during this time was necessarily paramount.*" (Italics added.)

Jurisdiction is "coextensive with authority and sovereignty."

> *United States v. Motohara,* 4 U.S. Dist. Ct. Hawaii, 62, 65.

Admitting then the sovereignty of the United States over duly organized territories, such as the Territory of Hawaii, it must follow that as soon as the federal government uses any land within such territory for military reservations, then *ipso facto* the territory is ousted of jurisdiction over such areas, in

the absence of specific congressional action to the contrary.

It is noteworthy in this connection to recall the case of *Lowe v. Lowe*, 133 A. 729, 150 Md. 592, 46 A.L.R. 983, 988, wherein the status of civilian employees living on military reservations has been ably set forth:

> "The great weight of authority is to the effect that lands acquired in accordance with the provisions of the Federal Constitution cease to be a part of the state, and become Federal territory, over which the Federal government has complete and exclusive jurisdiction and power of legislation. It is therefore clear that persons residing at Perry point are not residents of the state of Maryland . . . for taxation purposes, . . . for the reason that they reside upon territory belonging to the United States and not the state of Maryland; and in our opinion, for the same reason, they are not such residents of the state as would entitle them to file a bill for divorce in any of the courts of the state. It might be said that it is an unfortunate situation, where by reason of the fact that the Federal government has failed to make provision for such cases, residents upon such reservations are left without any remedy; but it is a condition wherein the only relief which can be given is by the Federal Congress."

This doctrine has been followed in the Territory of Hawaii, relying on *West v. West*, 35 Haw. 461, in which it was ruled that military personnel living off

their reservations could establish domicile for purposes of divorce, upon proof of proper intention to form a new domicile and, by analogy, that persons living on military reservations could not establish residence for the basis of divorce unless they had already become subject to the jurisdiction of the Territory. Quoting from this case:

> "At no time since his arrival in Honolulu has he resided either on a ship or upon the naval reservation. On the contrary, he has continuously resided off the naval reservation, in rented property in Honolulu, and at the time of the hearing in this case he was residing at the address given in his changed service record. *He has never paid a poll tax or other tax here or elsewhere.* (Italics added.) He has never registered or attempted to register as a voter here and testified that he has never voted anywhere. . . . He further testified that when he left Boston to reenlist, he had a fixed intention of abandoning any other home he had for the purpose of making Hawaii his home and permanent domicile, and has kept that intention ever since. . . .
>
> (p. 463, 464.)

> "We think that both reason and authority support the following conclusions: (1) That an officer or enlisted man, when permitted to establish a home outside of his military or naval station, may thus acquire a domicile but cannot acquire a domicile when required to reside in quarters furnished by the government on a military or naval station; . . ."
>
> (p. 472.)

Similarly it has been held that civilians residing on military reservations are subject to the same regulations. This is substantially the doctrine of *Lowe v. Lowe,* supra, which states again on p. 989,

> ". . . They (persons residing on government reservations) are not subject to jury duty; neither can they be taxed for the maintenance of the state government, including the courts . . ."

This doctrine is not opposed in any respect to that set forth in *Fort Leavenworth R.R. Co. v. Lowe,* 114 U.S. 525, 532, 533, which states:

> "When the title is acquired by purchase by consent of the legislatures of the states, the federal jurisdiction is exclusive of all state authority. This follows from the declaration of the constitution that congress shall have 'like authority' over such places as it has over the district which is the seat of government; that is, the power of 'exclusive legislation in all cases what soever.' Broader or clearer language could not be used to exclude all other authority than that of congress; and that no other authority can be exercised over them has been the uniform opinion of federal and state tribunals, and of attorneys general."

It has been shown supra that Congress did not intend that persons living on military reservations could be taxed without the right of objection. It is reiterated here again that the right of taxation is extended only when the state could establish jurisdiction, and as was said before, a Territory has an

even greater burden of proof than a state. It is therefore respectfully submitted that notwithstanding the *Buck Act,* the doctrine expressed in *Lowe v. Lowe,* supra, is still applicable.

It is further respectfully submitted that notwithstanding the *Public Salary Tax Act, Buck Act,* the *Yerian,*[1] *Graves,*[2] *Shaffer*[3] and similar cases, the responsibility still remains on the Territory of Hawaii to establish that it has jurisdiction over petitioner before its tax laws can be imposed upon him.

It is important also that the Buck Act is not a positive law creating new power. It merely serves to remove certain restrictions relative to the taxation of salaries of persons residing on military reservations by taxing authorities who can establish jurisdiction over the person sought to be taxed.

The taxing power of a Territory might be considered to be comparable to that of a state—but only insofar as persons domiciled in that Territory are concerned.

In the case at bar we have a person in the employ of the United States Army, living and working in an area specifically set aside for the exclusive use of the United States Army. In such a case, it is respectfully submitted that we have the relationship of dependent to sovereign, and that a general grant of taxation will not suffice to confer jurisdiction to tax persons so situated. Nothing less than a specific act of Congress will suffice.

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1 supra.

2 *Graves v. People of New York ex rel O'Keefe,* 306 U.S. 466, 59 S. Ct. 595, 83 L. Ed. 927, 120 A.L.R. 1466.

3 *Shaffer v. Carter,* 252 U.S. 37, 40 S. Ct. 221, 64 L. Ed. 445.

"Puerto Rico, an island possession, *like a territory* (italics added), is an agency of the federal government, having no independent sovereignty comparable to that of a state in virtue of which taxes may be levied.

"A territory or a possession may not do so (tax a federal instrumentality) because the dependency may not tax its sovereign. True the Congress may consent to such taxation; but the grant . . . of such a general power to tax should not be construed as consent. Nothing less than an act of Congress clearly and explicitly conferring the privilege will suffice."

Domenech v. National City Bank, 294 U.S. 199, 204, 205, 55 S. Ct. 366, 79 L. Ed. 857.

It is important to note also that petitioner has not come to the Territory of Hawaii to take up a permanent residence. Petitioner was not sent into the Territory of Hawaii but to a military reservation of the United States, by the United States Army in a manner similar to that which obtains in the transferring of personnel in the armed forces. Petitioner is subordinate to the United States Army—and it follows that he can be subject to transfer to areas further across the Pacific or even to some station on the mainland of the United States.

During his entire stay on the military reservation, he has maintained his home in the state of Colorado; owns his own home there; pays real estate and personal property taxes there; *has paid taxes on the same income sought to be taxed herein;* and is domiciled in and a citizen of the state of Colorado.

It is respectfully urged that in view of the special facts of the instant case only one taxing jurisdiction (other than the federal) can tax petitioners income and that is the state of Colorado and not the Territory of Hawaii.

Petitioner is subject to the jurisdiction of the state of Colorado—and it is urged that it then must follow that he cannot be also subject to the jurisdiction of the Territory of Hawaii.

> " 'We take it to be a point settled beyond all contradiction or question that a state has jurisdiction of all persons and things within its territory which do not belong to some other jurisdiction . . .' *Coe v. Errol,* 116 U. S. 517, 524. It is a corollary of this principle that a state has no jurisdiction over any person or thing over which another sovereign power has exclusive jurisdiction."
>
> From dissenting opinion *Kiker v. City of Philadelphia,* 31 A. 2d 289, 298.

Chief Justice Marshall, in *M'Culloch v. Maryland,* 17 U. S. 316, 4 Wheat. 316, 429, had this to say on the subject:

> "All subjects over which the sovereign power of a state extends, are objects of taxation; but those over which it does not extend, are, upon the soundest principles, exempt from taxation. This proposition may almost be pronounced self evident."

It is therefore respectfully urged that the doctrine of *Coe v. Errol,* 116 U. S. 517, 6 S. Ct. 475, 29 L. Ed.

715, to the effect that a state can have jurisdiction only over persons and things within its territory which do not belong to some other jurisdiction (supra) is in point. It is this doctrine that impels a consideration that under the special circumstances and facts of the instant case, petitioner is not subject to the jurisdiction of the Territory of Hawaii for tax purposes on compensation derived from the United States Army and earned on a military reservation, on the Territory of Hawaii, where in point of fact petitioner came to said military reservation from another state; did not lose his citizenship and domicile in that other state; and is already subject to that state's jurisdiction for purposes of taxation on the same income sought to be taxed herein.

Moreover, it is respectfully submitted that, Congress, when it passed the *Buck Act,* did not intend to permit the unconscionable burden of triple taxation.

On the contrary, Congress insisted that domicile be established as a basis for income taxation in the District of Columbia Income Tax Law so that there would be no question of triple taxation (by Federal, State of domicile and the District of Columbia). In drafting this bill, it was said by Representative Bates:

> "We raised that particular point (in conference) because we are much concerned about how those who come from our states would be affected by the income tax provisions of the new laws, and it was distinctly understood that in this bill there should be no triple taxation . . ." 84 Cong. Rec. 8973.

In construing the provisions of the District of Columbia Income Tax Law, the Supreme Court has held that persons coming to the District of Columbia to work for the Federal government, even for an indefinite period of time, should not be subject to the tax if it be proved that a domicile elsewhere actually existed.

> "Did he pay taxes in the old community because of his retention of domicile which he could have avoided by giving it up? Were they nominal or substantial? In view of the legislative history showing that Congress was concerned lest there be 'triple taxation'—Federal, State and District (of Columbia) — the Board should consider whether taxes similar in character to those laid by the Act have been paid elsewhere."
>
> *District of Columbia v. Murphy,* 314 U. S. 441, 458.[9]

Petitioner contends that federal employees would be reluctant to accept employment on military bases located within the geographical limits of states which levied heavy income taxes, which they must meet, together with similar taxes assessed by their domiciliary state, if triple taxation be mandatory.

Other states and territories might decide to levy taxes on the income of persons who merely entered their borders and conducted even a day's business or work. Government employees whose territory ex-

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[9] Accord: *D. C. v. Pace,* 320 U. S. 698; followed:
Beedy v. District of Columbia, 126 F. (2d) 647.
Collier v. District of Columbia, 161 F. (2d) 649.
Beckham v. District of Columbia, 163 F. (2d) 701.

tended over large geographical areas inclusive of several states could be taxed by any state or territory through which they passed.

To permit such overlapping of taxation would result in the clashing of sovereignties—something to be avoided.

As Chief Justice Marshall well said:

> "We have a principle which is safe for the states and safe for the union. We are relieved, as we ought to be, from clashing sovereignty; from interfering powers; from a repugnancy between a right in one government to destroy what there is a right in another to preserve."
>
> *M'Culloch v. Maryland*, 17 U. S. 316.

It was to avoid the possibility of just such confusion and controversy that the matter of "jurisdiction" to tax was specifically referred to in the Public Salary Tax Act of 1939 and the *Buck Act*.

If carried to its ultimate end, the very basis of income taxation would be defeated and the taxing standards prove futile. It would open the way for retaliatory taxes *ad infinitum*.

These particular facts coupled with the factor that we are dealing with the power of a territory as distinguished from that of a state lead counsel to suggest that there is *no* case squarely in point with the instant appeal.

It is the very fact that in the instant case we have a taxpayer, domiciled in one state, paying taxes to this state, on the same income that is sought to be taxed

herein that distinguishes our case, and raises a serious doubt as to the power of Congress to give its consent to taxation within federal areas and have that consent work in all cases. Not only is involved the taxing authority of the state or territory and the federal area, but also the sovereignty of the state of the domicile of the taxpayer which must be considered.

The problem is not whether the territory has broad powers of taxation but simply whether petitioner is subject to the jurisdiction of the territory. And if he is not so subject, then neither the Public Salary Tax Act, nor the *Buck Act,* nor any other congressional act, can render him subject to territorial taxation upon income taxed by his domiciliary state.

As between two conflicting taxing authorities every instinct of reason, justice and practicality urges that the taxing authority of the domiciliary state should prevail.

It is the contention of petitioner, that simply by coming to live and work on a military reservation, a person domiciled in another state does not *ipso facto* become subject to the Territorial tax laws, and that he must place his person or activity within the jurisdiction of the Territory, and in the words of the decision in the case of *Wood v. Tawes,* 28 A. (2d) 850, 853:

> "Maintenance of a place of abode, however, must involve at least a sufficient residence within the state to bring the individual within the taxing jurisdiction, otherwise the exaction might amount to a deprivation in violation of the 14th Amendment of the United States Constitution."

In conclusion, petitioner prays that this writ may be granted.

Respectfully submitted,

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Attorney for Petitioner.

HYMAN M. GREENSTEIN,
Of Counsel.

No. 700

IN THE

Supreme Court of the United States

October Term, 1948

VICTOR J. VEATCH,
Petitioner,
vs.
WILLIAM BORTHWICK, Tax Commissioner of the Territory of Hawaii,
Respondent.

BRIEF OF RESPONDENT WILLIAM BORTHWICK, TAX COMMISSIONER OF THE TERRITORY OF HAWAII, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	1-2
STATEMENT OF THE CASE	2-3
SUMMARY OF ARGUMENT	3
ARGUMENT	3-11
I. The Power of the Territory of Hawaii to Impose the Tax in Question is Beyond Dispute, Under the Public Salary Tax Act of 1939, and the Buck Act Enacted in 1940	3-9
II. The Power of the Territory of Hawaii to Impose the Tax in Question Existed Even in the Absence of the Public Salary Act of 1939 and the Buck Act Enacted in 1940	10-11
CONCLUSION	11
APPENDIX	
Legislative History of the Buck Act	13-16

TABLE OF AUTHORITIES CITED

Cases

Page

Bowers v. Oklahoma Tax Commission, 51 F. Supp. 652 (D.C.W.D. Okla. 1943) 8
Carnegie Illinois Steel Corp. v. Alderson, 127 W.Va. 807 9
Cassels v. Wilder, 23 Haw. 61 10
Curry v. McCanless, 307 U.S. 357 4
Davis v. Howard, 306 Ky. 149 9
Falls City Brewing Co. v. Reeves, 40 F. Supp. 35 9
Fort Leavenworth R. Co. v. Lowe, 114 U.S. 525 5
Graves v. Elliott, 307 U.S. 383 4
Graves v. People of New York ex rel O'Keefe, 306 U.S. 466 .... 4, 10
Graves v. Schmidlapp, 315 U.S. 657 4
Gromer v. Standard Dredging Co., 224 U.S. 362 .... 4, 10
Guaranty Trust Co. v. Virginia, 305 U.S. 19 3
Haavik v. Alaska Packers Ass'n, 263 U.S. 510 3
Hughes v. Wisconsin Tax Commission, 227 Wis. 274, 278 N.W. 403 4
James v. Dravo Contracting Co., 302 U.S. 134 5
Kiker v. City of Philadelphia, 346 Pa. 624, 31 A. 2d 289, cert. denied, 320 U.S. 741 .... 3, 8
Lawrence v. State Tax Commission, 286 U.S. 276 3
New York ex rel Cohn v. Graves, 300 U.S. 308 3
Query v. United States, 316 U.S. 486 9
Reynolds v. People, 1 Colo. 179 11
Rice v. Hammond, 19 Okla. 419, 91 Pac. 698 11
Sanders v. Oklahoma Tax Commission, 197 Okla. 285, 169 P. 2d 748, cert. denied, 329 U.S. 780 .... 4, 9
Shaffer v. Carter, 252 U.S. 37 3
Silas Mason Co. v. Tax Commission, 302 U.S. 186 5
State Tax Commission v. Aldrich, 316 U.S. 174 4
Standard Oil Co. v. California, 291 U.S. 242 6
Surplus Trading Co. v. Cook, 281 U.S. 647 .... 5, 11
Territory v. Carter, 19 Haw. 198 10
Travis v. Yale & Towne Mfg. Co., 252 U.S. 60 3
Yellowstone Park Transp. Co. v. Gallatin County, 31 F. 2d 644 (C.A. 9th 1929, cert. denied, 280 U.S. 555) 6
Yerian v. Territory, 130 F. 2d 786 (1942) 2, 3

Statutes

Page

Buck Act, 54 Stat. 1059, c. 787, reenacted,
61 Stat. 641, c. 389 .... 2, 3, 5, 6, 9, 10, 13-16
Sec. 1 (now sec. 105, Title 4, U.S. Code) 6, 7, 8
Sec. 2 (now sec. 106, Title 4, U.S. Code) 2, 6, 7, 8, 14
Sec. 4 (now sec. 108, Title 4, U.S. Code) 15
Sec. 6 (now sec. 110, Title 4, U.S. Code) 6- 7

Constitution of the United States, Article I, sec. 8, cl. 17 .... 5, 10

Hawaiian Organic Act, 31 Stat. 141, c. 339 10

Hawaii National Park Act, 46 Stat. 227, c. 200,
sec. 1 (16 U.S.C.A. 395) 10

Public Salary Tax Act, 1939, 53 Stat. 575, c. 59,
sec. 4 (5 U.S.C.A. 84a) 2, 3, 4, 10, 14

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No. 700

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OPINIONS BELOW

The opinion of the Supreme Court of Hawaii is reported in volume 38 of Hawaii Reports, page 188. The per curiam opinion of the United States Court of Appeals for the Ninth Circuit is reported in volume 172 of Federal Reporter, Second Series, page 226, case 2.

JURISDICTION

The petition for certiorari seeks review, under section 1254 of Title 28 of the United States Code, of a case which reached the Court of Appeals upon appeal from the Su-

preme Court of Hawaii, under section 1293 of Title 28. The amount in controversy being only $237.35 (R. 15), the case reached the Court of Appeals under that portion of section 1293 which relates to "cases involving the Constitution, laws or treaties of the United States or any authority exercised thereunder."

STATEMENT OF THE CASE

This is an action brought by the Tax Commissioner of the Territory of Hawaii for the collection of taxes upon the compensation received by the petitioner during the period October, 1944, to September, 1946, for services performed as an employee of the United States, working and living at Hickam Field, a military reservation within the exterior boundaries of the Territory of Hawaii (R. 12). No tax was imposed by the Territory on any other income petitioner may have, nor does the income so taxed antedate the effective date of either of the federal acts covering this precise situation, to wit, the Public Salary Tax Act of 1939 (53 Stat. 575, c. 59, s. 4, 5 U.S.C.A. 84a), and the Buck Act (54 Stat. 1059, c. 787, approved Oct. 9, 1940, reenacted as sections 105-110 of the new Title 4 of the United States Code by the Act of July 30, 1947, 61 Stat. 641, c. 389).

It was stipulated that petitioner is a domiciliary of the State of Colorado, and that he has paid taxes to that state on the same income, without claiming or receiving any credit on account of his tax liabilities if any, to the Territory of Hawaii (R. 12-13). However, such facts are immaterial, since the Territory of Hawaii has clear taxing jurisdiction over the place where the income was earned.

The Court of Appeals held (R. 66) that the objections made to the tax had been disposed of by its decision in *Yerian v. Territory of Hawaii,* 130 F. 2d 786, decided in 1942, and by section 2 (a) of the Buck Act (4 U.S.C. 106 (a)). Petitioner does not deny that the *Yerian* case was rightly

decided, but seeks to distinguish it on the ground that he lives and works on a military reservation. This aspect of the case is decisively disposed of by the Buck Act, which petitioner seeks to render nugatory. A similar attempt was made in *Kiker v. City of Philadelphia*, 346 Pa. 624, 31 A. 2d 289, in which this Court denied certiorari, 320 U.S. 741.

SUMMARY OF ARGUMENT

The power of the Territory of Hawaii to impose the tax in question is beyond dispute under the Public Salary Tax Act of 1939 and the Buck Act enacted in 1940; and such power existed even in the absence of such statutes.

ARGUMENT

I.

THE POWER OF THE TERRITORY OF HAWAII TO IMPOSE THE TAX IN QUESTION IS BEYOND DISPUTE, UNDER THE PUBLIC SALARY TAX ACT OF 1939, AND THE BUCK ACT ENACTED IN 1940.

Appellant concedes (as he necessarily must) that he is subject to the tax on his compensation received as an employee of the United States, if the Territory of Hawaii had jurisdiction to impose such tax (Br. pp. 12-13). Of course the Territory agrees that jurisdiction to tax is essential.

Jurisdiction to tax the income derived from services may be exercised by the state in which the employee is domiciled, or by the state in which he is employed, or by both. *Shaffer v. Carter*, 252 U.S. 37, 49, *Travis v. Yale & Towne Mfg. Co.*, 252 U.S. 60, 75, *Haavik v. Alaska Packers Assn.*, 263 U.S. 510, *Yerian v. Territory, supra,* supporting the jurisdiction of the state in which the taxpayer is employed; *Lawrence v. State Tax Commission*, 286 U.S. 276, *New York ex rel Cohn v. Graves*, 300 U.S. 308, supporting the jurisdiction of the domiciliary state. That dual taxing jurisdic-

tion may exist as to the same income or other subject of tax, and that such dual jurisdiction may result in double taxation, has been expressly recognized by this Court. *Guaranty Trust Co. v. Virginia,* 305 U.S. 19; *Curry v. McCanless,* 307 U.S. 357, stating as an accepted rule, by way of analogy to the case there in issue, that "income may be taxed both by the state where it is earned and by the state of the recipient's domicile" (p. 368); *Graves v. Elliott,* 307 U.S. 383; *Graves v. Schmidlapp,* 315 U.S. 657, 661; *State Tax Commission v. Aldrich,* 316 U.S. 174; see also *Hughes v. Wisconsin Tax Commission,* 227 Wis. 274, 278 N.W. 403.

When Congress enacted the Public Salary Tax Act of 1939 (5 U.S.C.A. 84a), that statute operated to remove any objection to the taxation of compensation of federal employees based upon the tax immunity of their employer. The legislation originated prior to the decision in *Graves v. People of New York ex rel. O'Keefe,* 306 U.S. 466, which in itself removed the objection.

By the Public Salary Tax Act, Congress left to the appropriate taxing authorities "having jurisdiction to tax", as stated in the Public Salary Tax Act, the matter of state and local taxation of federal salaries. Many states, and also cities, imposing income taxes which made the place where the income was earned the basis of taxing jurisdiction, soon found themselves concerned with the problem of classifying each military or naval reservation of the United States as within or without the state or city limits from the standpoint of legislative jurisdiction. Meanwhile the increasing reliance by the several states, and by many cities, upon sales and use taxes, intensified the problem.[1]

This problem of "enclaves", so called,[2] exists as to military and naval reservations in the several states, as distinguished from the territories. The situation as to territories

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[1] See Committee reports on the Buck Act, Appendix.

[2] *Sanders v. Oklahoma Tax Commission,* 197 Okla. 285, 169 P. 2d 748, cert. denied 329 U.S. 780.

is reviewed in the next point. "Enclaves" exist in the several states under and pursuant to Article I, Sec. 8, Cl. 17 of the Constitution, which prescribes that the Congress shall have power "to exercise exclusive legislation in all cases whatsoever, over such district as may * * * become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; * * *."

Prior to the Buck Act, lands purchased for a military reservation with the consent of a state did not lie within the state's territorial taxing jurisdiction. *Surplus Trading Co. v. Cook,* 281 U.S. 647. However, even before the Buck Act, the states could, and sometimes did, qualify their consent to a purchase by the United States so as to retain taxing jurisdiction. *James v. Dravo Contracting Co.,* 302 U.S. 134; *Silas Mason Co. v. Tax Commission,* 302 U.S. 186.

In instances where Article I, Sec. 8, Cl. 17 did not literally apply complete jurisdiction was retained by states over military reservation lands, such instances being where (a) the reservations were not excepted from the jurisdiction of the state at the time of its admission, but were then in existence and hence not "purchased by the consent of the legislature of the state" within the meaning of the constitutional provision, or (b) the reservations were established on lands of the public domain of the United States, hence not "purchased by the consent of the legislature of the state", or (c) the reservations were acquired by eminent domain or otherwise without the consent of the state legislature. See *Surplus Trading Co. v. Cook, supra,* at pages 650-651 of 281 U.S. But even such retained jurisdiction later might be ceded by the states to the United States, reserving taxing jurisdiction (*Fort Leavenworth R. Co. v. Lowe,* 114 U.S. 525) or not reserving taxing juris-

diction (*Standard Oil Co. v. California*, 291 U.S. 242, *Yellowstone Park Transp. Co. v. Gallatin County*, 31 F. 2d 644 (C.A. 9th 1929, cert. denied 280 U.S. 555) dependent upon the exact terms of the cession by the particular state.

This lack of uniformity and the consequent complexity attendant upon the administration of tax acts with respect to military reservations, led Congress to enact the Buck Act, entitled "An act to permit the States to extend their sales, use, and income taxes to persons residing or carrying on business, or to transactions occurring, in Federal areas, and for other purposes." (54 Stat. 1059, c. 787, approved Oct. 9, 1940, reenacted as sections 105-110 of the new Title 4 of the United States Code by the Act of July 30, 1947, 61 Stat. 641, c. 389.)

The first section of the Act has to do with sales and use taxes. The second section has to do with income taxes and provides that "no person shall be relieved from liability * * * by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area". This section gives "full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area".

By section 6 it is made clear what states are to benefit by the Act. It is there provided (subsection (e)) that:

> "* * * any Federal area, or any part thereof, which is located within the exterior boundaries of any State shall be deemed to be a Federal area located within such State." (Now part of sec. 110 (e) of the new Title 4 of the U. S. Code.)

As this provision is explained in Sen. Rep. No. 1625, 76th Cong., 3d Sess.:

> "Any Federal area, or any part thereof, which is located within the exterior boundaries of any State is deemed to be a Federal Area within such State for

the purposes of this act. For example, Yellowstone National Park is a Federal area which is located within the exterior boundaries of three States (Wyoming, Montana, and Idaho) and therefore, for the purposes of this act, that part of the Park which falls within the exterior boundaries of Wyoming will be included within Wyoming's taxing jurisdiction, that part which falls within Montana will be included within Montana's taxing jurisdiction, and that part which falls within Idaho will be included within Idaho's taxing jurisdiction."

Section 6 also contains definitions including a Territory in the term "State" (subsection (d)), and including taxes levied on gross income in the term "income tax" (subsection (c)).

Petitioner argues that the Buck Act accomplished nothing. Congress stipulated in section 1 as to sales and use taxes, and in section 2 as to income taxes, that the tax to which Congress consented must be levied by a state, or duly constituted authority therein, "having jurisdiction to levy such a tax". This is construed by petitioner as meaning that the jurisdiction of the state must be sustained independently of all of the provisions of the Act. As to income taxes, petitioner argues that the state must have domiciliary jurisdiction over him. As to sales and use taxes, these being based on territorial jurisdiction alone, it does not appear what independent ground of jurisdiction there could be. Of course it was not the intent of Congress to require that a state or other taxing authority have independent taxing jurisdiction, since that would strip the Act of meaning. The intent of this provision, i.e., "having jurisdiction to levy such a tax", both in section 1 and section 2, was to require that the state or other taxing authority have jurisdiction but for the specific grounds and reasons immediately following which in said sections 1 and 2 are stated not to be objections to tax liability. Thus in section 1 it is required

that the state or other taxing authority have jurisdiction to levy a sales or use tax but for the occurrence of the sale or use, in whole or in part, within a federal area.[3] In section 2 it is required that the state or other taxing authority have jurisdiction to levy an income tax but for the residence of the taxpayer, or the occurrence of the transactions or performance of the services from which the income is received, within a federal area.[4]

In *Bowers v. Oklahoma Tax Commission,* 51 F. Supp. 652 (D.C.W.D., Okla. 1943), the court, after quoting language in section 1 of the Buck Act concerning sales and use taxes, which is identical to that used in section 2 concerning income taxes, said:

> "Language could hardly be more explicit."

In *Kiker v. City of Philadelphia, supra,* 346 Pa. 624, 31 A. 2d 289, cert. denied 320 U.S. 741, a case precisely in

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[3] Section 1 reads:

"(a) No person shall be relieved from liability for payment of collection of, or accounting for any sales or use tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, on the ground that the sale or use, with respect to which such tax is levied, occurred in whole or in part within a Federal area; and such State or taxing authority shall have full jurisdiction and power to levy and collect any such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area."

(Now Section 105 (a) of the new Title 4 of the U. S. Code.)

[4] Section 2 reads:

"(a) No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such state to the same extent and with the same effect as though such area was not a Federal area."

(Now Section 106 (a) of the new Title 4 of the U. S. Code.)

point upholding the levy of a gross income tax upon the salary of a nonresident derived from services performed in a federal area, the court said of the contention made by petitioner in this case:

> "* * * Such a construction is the equivalent of saying that Congress merely intended to authorize the States to tax persons whom they were already permitted to tax. We cannot permit such an absurd construction to nullify this legislation. * * *"

The Supreme Court of Hawaii said of the Buck Act:

> "It seems clear that the above Act was expressly designed to express the consent of the United States to the levy by the States and Territories of just such a tax as the one here involved against persons residing and employed just as the defendant resides and is employed, and that the Congress had authority to so consent for the United States."
>
> (Rec. 41.)

The present case is a clear one in which certiorari should be denied.

The legislative history of the Buck Act is set forth in the Appendix for the convenience of the Court, should the Court wish to refer to it. The Buck Act has been applied in many cases in addition to those above cited.[5]

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[5] *Sanders v. Oklahoma Tax Commission,* 197 Okla. 285, 169 P. 2d 748, cert. denied 329 U.S. 780 (*supra,* footnote 2), involving use tax on gasoline; *Davis v. Howard,* 306 Ky. 149, 206 S.W. 2d 467 (1947), involving use tax on gasoline and following the *Kiker* case; *Carnegie Illinois Steel Corp. v. Alderson,* 127 W.Va. 807, 34 S.E. 2d 737, cert. denied 326 U.S. 764 (1945), involving occupation tax on manufacture of steel, following the *Kiker* case; *Falls City Brewing Co. v. Reeves,* 40 F. Supp. 35 (D. C. Conn. 1941), upholding taxing jurisdiction in general but holding that United States had not consented to a tax on sales made by a post exchange; *Query v. United States,* 316 U.S. 486 (1942), relating to tax on sales by post exchanges within federal areas.

II.

THE POWER OF THE TERRITORY OF HAWAII TO IMPOSE THE TAX IN QUESTION EXISTED EVEN IN THE ABSENCE OF THE PUBLIC SALARY TAX ACT OF 1939 AND THE BUCK ACT ENACTED IN 1940.

That the states and territories had power to tax federal salaries under the doctrine of *Graves v. O'Keefe, supra*, even in the absence of the Public Salary Tax Act, has been held by this Court, and by the Court of Appeals in the *Yerian* case.

As to the federal areas in the several states, the scope of the taxing jurisdiction might or might not be as wide in the absence of the Buck Act as it is under that act, dependent upon the application of Article I, Sec. 8, Cl. 17 of the Constitution, under the particular circumstances. No uniform rule would exist in the absence of the Buck Act, and to establish uniformity was the very purpose of that Act.

The federal areas in the territories stand on a different footing from those in the several states. The constitutional provision, which refers to states, does not literally apply, and the only question in a territory is what Congress intended in organizing the territorial government. In organizing the government of the Territory of Hawaii, Congress did not except from the jurisdiction thereof any federal reservation (Hawaiian Organic Act, 31 Stat. 141, c. 339, approved April 30, 1900). The Hawaii National Park Act is the only instance of action by Congress excepting land from the Territory's jurisdiction (Act of April 30, 1930, 46 Stat. 227, c. 200, as amended, 16 U.S.C.A. 395). The exercise of the Territory's jurisdiction over federal areas is valid, until and unless disapproved by Congress. *Gromer v. Standard Dredging Company,* 224 U.S. 362, 366, 370-371, citing and approving 26 Ops. Atty. Gen. 91; *Cassels v. Wilder,* 23 Haw. 61; *Territory v. Carter,* 19 Haw. 198;

Reynolds v. People, 1 Colo. 179; *Rice v. Hammond,* 19 Okla. 419, 91 Pac. 698; see also *Surplus Trading Co. v. Cook, supra,* 281 U.S. 647, 652, distinguishing military reservations in the states from those in the territories.

CONCLUSION

The petition for certiorari should be denied.

Dated at Honolulu, Territory of Hawaii, May 7, 1949.

Respectfully submitted,

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APPENDIX

LEGISLATIVE HISTORY OF THE BUCK ACT

Initially the Buck Act was framed "to authorize the levy of State, Territory, and District of Columbia taxes upon, with respect to, or measured by sales, purchases, or use of tangible personal property * * * occurring in United States National Parks, military and other reservations or sites over which the United States government may have jurisdiction".

As so drawn the bill passed the House at the first session of the 76th Congress, and went to the Senate where it was referred to the Committee on Finance. That Committee reported it to the Senate with clarifying changes on July 28, 1939 (Sen. Rep. 1028, 76th Cong., 1st Sess.). The report states:

> "The purpose of the bill is to provide that State sales and use taxes shall apply with respect to transactions in Federal areas in the same manner and to the same extent as with respect to transactions outside such areas. * * * The bill will not affect any right to claim an exemption from such taxes on any ground other than that the Federal Government has exclusive jurisdiction over the area where the transaction occurred."

The report sets forth the report of the Committee on Ways and Means of the House, H. R. Rep. No. 1267, 76th Cong., 1st Sess., to the same effect.

After being so reported by the Senate Finance Committee on July 28, 1939, the bill encountered objections on the floor (see Vol. 84, Cong. Rec. Part 10, pp. 10685 and 10907, with respect to the effect of the bill as to Indian reservations).

It was recommitted to the Committee on Finance, was reported with amendments, and was enacted with these amendments. (Vol. 86, Cong. Rec. Part 11, pp. 12834-5; id., Part 12, p. 12998.) As so reported by the Senate Committee (Sen. Rep. No. 1625, 76th Cong., 3d Sess.):

> "In general, the bill, as amended, proposes to do three things. First, it provides that State sales and use taxes (with certain exceptions which are hereafter explained) shall be applicable with respect to transactions occurring within Federal areas in the same manner and to the same extent as they are applicable with respect to transactions occurring outside such areas and within the State. Second, it provides that State income taxes shall be applicable with respect to persons residing within a federal area or receiving income from transactions occurring or services performed in such area in the same manner and to the same extent as they are applicable with respect to persons residing outside such area or receiving income from transactions occurring or services performed outside such area. Third, it contains certain clarifying amendments to section 10 of the Federal Highway Act of June 16, 1936 * * *"

The report then proceeds with "Detailed Explanation of the Bill", and as to section 2 (now section 106 of Title 4) has this to say:

> "Section 2 (a) of the committee amendment removes the exemption from income taxes levied by a State, or any duly constituted taxing authority in a State, where the exemption is based solely on the ground that the taxpayer resides within a Federal area or receives his income from transactions occurring or services performed in such area. One of the reasons for removing the above exemption is because of an inequity which has arisen under the Public Salary Tax Act of 1939. Under that act a State is permitted to tax the compensation of officers and employees of the United States when such officers and employees reside

or are domiciled in that State but is not permitted to tax the compensation of such officers and employees who reside within Federal areas within such State. For example, a naval officer who is ordered to the Naval Academy for duty and is fortunate enough to have quarters assigned to him within the Naval Academy grounds is exempt from the Maryland income tax because the Naval Academy grounds are a Federal area over which the United States has exclusive jurisdiction, but his less fortunate colleague, who is also ordered there for duty and rents a home outside the Academy ground because no quarters are available inside, must pay the Maryland income tax on his Federal salary. Another reason for removing the above exemption is that under the doctrine laid down in James v. Dravo Contracting Co., 1937, 302 U.S. 134 [58 S.Ct. 208, 82 L.Ed. 155, 114 A.L.R. 318], a State may tax the income or receipts from transactions occurring or services performed in an area within the State over which the United States and the State exercise concurrent jurisdiction but may not tax such income or receipts if the transactions occurred or the services were performed in an area within the State over which the United States has exclusive jurisdiction."

Because of the importance attached by counsel for petitioner to section 4 of the bill, now section 108 of the new Title 4 (Br. p. 14), the committee's report on this section is quoted below. Counsel for petitioner apparently construes this section as nullifying all the remainder of the statute. All that it says is that the United States shall not be deemed to have been deprived of exclusive jurisdiction over Federal areas, where theretofore enjoyed, "for the purposes of any other provision of law", that is, laws other than the tax laws to which consent was given by the bill. The committee report says:

"Section 4 of the committee amendment was ininserted to make certain that the criminal jurisdiction

> of Federal courts with respect to Federal areas over which the United States exercises exclusive jurisdiction would not be affected by permitting the States to levy and collect sales, use, and income taxes within such areas."

The enactment of Title 4 of the United States Code was subsequent to the period involved in this case, and moreover in enacting Title 4 Congress made no change in the Buck Act. As stated in H. R. Rep. No. 252, 80th Cong., 1st Sess., accompanying H. R. Rep. No. 1566, which became the statute enacting Title 4, this House Report being repeated in Sen. Rep. No. 659 of the same session on the same bill, the purpose simply was to enact Title 4 into positive law, without material change. Thus it is stated by the Committee on the Judiciary of the House and repeated by the Senate Committee on the Judiciary:

> "This bill is intended to codify and enact into positive law the various provisions of laws now contained in title 4 of the United States Code.
>
> "Under existing law these sections of title 4 of the United States Code are merely prima facie evidence of the law. They are taken from a number of acts and the Revised Statutes and are grouped together and classified for convenience * * *
>
> * * *
>
> "This bill takes each section of title 4 of the United States Code, 1940 edition, as of January 2, 1947, and without any material change enacts each section into positive law. No attempt is made in this bill to make amendments in existing law. That is left to amendatory acts to be introduced after the approval of this bill."